

**REMARKS**

Claims 1 and 5-6 are currently being amended. Basis for the amendment to claims 1 and 5 can be found on page 4, lines 24-27 in Applicant's specification. Additionally, claim 6 is being amended to fix the claim's dependency.

The amendments to the claims presented herein do not introduce new matter within the meaning of 35 U.S.C. §132. Accordingly, the Examiner is respectfully requested to enter these amendments.

**1. Supplemental Information Disclosure Statements**

Applicant previously filed two Supplemental Information Disclosure Statements on February 14, 2007 and October 29, 2007; however, to date, Applicant has not received the initialed PTO-1449 forms back from the Examiner. Accordingly, Applicant respectfully requests the Examiner to review and acknowledge the documents cited in both Supplemental Information Disclosure Statements, and initial and return to Applicant a copy of the PTO-1449 forms previously submitted.

**2. Rejection of Claims 1-6 Under 35 U.S.C. §102(b)**

The Office Action states that claims 1-6 are rejected under 35 U.S.C. §102(b) as being anticipated by Tanaka, et al. (U.S. Patent 6,191,219). In particular, the Office Action states,

1.1. Regarding Claim 1, Tanaka discloses polypropylene composition , comprising ( see claim 1):

Component (A)- 50-90 wt% of polypropylene component, including (see lines 40-60, column 2) homopolymer of propylene or copolymers with alpha-olefins, wherein alpha-olefin content is preferably less than 8 wt.-%-this component has same composition as Applicant's component (A)

Component (B)-3-40 wt.% of ethylene/alpha-olefin copolymer, with ethylene content of 60 to 95 mole%, and molecular weight distribution ( $M_w/M_n$ ), determined by gel permeation chromatography is less than 3 - this components reads on Applicant's component B2

Component (C)- 2-20 wt.% of propylene/ethylene/1-butane copolymer, wherein propylene content is 50-85 mole% - same as in Applicant's component B1.

1.2. Even though Tanaka silent about viscosity ratios between components A,B and C. However, viscosity range for component B ( see line 50, page 4) is same-0.5 to 5.0 dl/g- as viscosity for Applicants component B2 ( see paragraph [0027], page 2). Viscosity is inherent function of molecular weight and molecular weight distribution for polymers of the same chemical composition and can be also characterized by melt flow rate ( MFR). Tanaka further discloses that preferable MFR range for component A is from 1 to 50 g/10min.( see line 20, column 3), which is fully encompasses range of 0.3 to 15 g/10 min, claimed by Applicant( see paragraph [0017], page 2); for component B ( see line 35, column 2) is from 0.5 to 10 g/10 min., and for component C (see line 60, column 6) is from 0.1 to 10 g/10 min. Therefore viscosity ranges and ratios determine by MFR or by actual viscosity measurement will be in the same ranges as claimed by Applicant in Claims 1 and 2. Burden shifts to Applicant to prove the contrary by presenting factual comparative results.

1.3. Tanaka further discloses that important parameter for component B, ( see lines 1 to 45, column 4) indicated state of compositional distribution of structural units or randomness of chain distribution, which is equivalent of CSD or blockness claimed by applicant in Claim 1 for same component (B2), should have value in the range of 1.0 to 1.4 in order to obtain composition with superior heat resistance.

1.4. Presence of 'heterologus bond' claimed by Applicant in Claim 3 is inherent property of all propylene polymers and depend on implemented catalytic system and polymerization conditions. Tanaka discloses presence and importance of

this type of microstructure for specific applications ( see lines 45-65,column 7).

1.5. Tanaka silent regarding stereoregularity of component A claimed by Applicant in Claim 4. However, stereoregularity is inherent property of polypropylene component and depend on type of catalytic system and polymerization process used for manufacturing of a particular propylene polymer. Because Tanaka discloses that polypropylene resin (A) can be produced by processes with solid titanium or metallocene catalyst (see line 5-10,column 3), same as Applicant indicated in disclosure, than degree of stereoregularity will be identical for both polymers.

1.6. Tanaka also silent regarding morphology of obtained films from polypropylene composition, particularly about layers or needles, in specific sizes and aspect ratios as claimed by Applicant in Claim 5. Again, phase morphology is inherent property of the composition and depends on compatibility of ingredients and relative quantities. Some production technique could alternate some aspects of phase morphology, but Applicant does not discloses or claimed any specific production technique. Burden shifts to the Applicant to provide factual evidence to the contrary.

1.7. Regarding Applicant's claim 6, Tanaka discloses that this composition specifically useful for superior non-stretched( good mechanical properties), transparent and impact resistant film.

#### **RESPONSE**

Applicant respectfully traverses the rejection of claims 1-6.

For a reference to anticipate an invention, all of the elements of that invention must be present in the reference. The test for anticipation under section 102 is whether each and every element as set forth in the claims is found, either expressly or inherently, in a single prior art reference. *Verdegaal Bros. V. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the

claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must also be arranged as required by the claim. *In re Bond*, 15 USPQ2d 1566 (Fed. Cir. 1990). There must be no differences between what is claimed and what is disclosed in the applied reference. *In re Kalm*, 154 USPQ 10, 12 (CCPA 1967); *Scripps v. Genentech Inc.*, 18 USPQ2d 1001, 1010 (Fed. Cir. 1991). Moreover, it is incumbent upon the Examiner to identify wherein each and every facet of the claimed invention is disclosed in the applied reference. *Ex parte Levy*, 17 USPQ2d 1461, 1462 (BPAI 1990). And the Examiner is required to point to the disclosure in the reference "by page and line" upon which the claim allegedly reads. *Chiong v. Roland*, 17 USPQ2d 1541, 1543 (BPAI 1990).

With respect to the current rejection, Applicant respectfully believes that Tanaka, et al. fails to teach, suggest, or disclose, "A polypropylene resin composition which comprises:

- a) 40 to 80% by weight of a polypropylene component (A) comprising a copolymer of propylene with ethylene and/or a C<sub>4-12</sub>  $\alpha$ -olefin wherein the amount of units derived from ethylene and/or a C<sub>4-12</sub>  $\alpha$ -olefin is at most 5% by weight, or a homopolymer of propylene, and
- b) 20 to 60% by weight of a copolymer component (B) containing a copolymer (B-1) and a copolymer (B-2), wherein both the copolymer (B-1) and copolymer (B-2) are copolymers of propylene with ethylene and/or a C<sub>4-12</sub>  $\alpha$ -

olefin, in the copolymer (B-1), the amount of units derived from propylene is from more than 50% by weight to 85% by weight, and the copolymer (B-2) is a propylene copolymer where the amount of units derived from propylene is 15 to 50% by weight, the molecular weight distribution ( $M_w/M_n$ ) by gel permeation chromatography is 3.0 or less, and blockness (CSD) determined using the measured NMR values is 0.8 or less;

in which composition the amount of (B-2) with respect to the whole polypropylene resin composition is at least 3% by weight, and a ratio of a limiting viscosity of the copolymer (B-1) to a viscosity of the polypropylene component (A), ( $[\eta]_{B-1}/[\eta]_A$ ), is at most 1.5, and a ratio of a limiting viscosity of the copolymer (B-1) to the viscosity of copolymer (B-2), ( $[\eta]_{B-1}/[\eta]_{B-2}$ ), is at least 0.8."

In particular, as noted by the Examiner on page 3, lines 16-20, of the current Office Action,

Tanaka further discloses that important parameter for component B, ( see lines 1 to 45, column 4) indicated state of compositional distribution of structural units or randomness of chain distribution, which is equivalent of CSD or blockness claimed by applicant in Claim 1 for same component (B2), should have value in the range of 1.0 to 1.4 in order to obtain composition with superior heat resistance.

However, Applicant is claiming a polypropylene resin composition comprising, in part, a copolymer component (B), wherein copolymer component (B) comprises a **blockness (CSD) value of 0.8 or**

less. Accordingly, Applicant respectfully believes Tanaka, et al. clearly does not anticipate Applicant's currently claimed polypropylene resin compositions. As such, Applicant respectfully believes the current rejection should be withdrawn for this reason alone.

Notwithstanding, the Examiner states on page 3, lines 3-15 of the currently pending Office Action,

1.2. Even though Tanaka silent about viscosity ratios between components A,B and C. However, viscosity range for component B ( see line 50, page 4) is same-0.5 to 5.0 dl/g-as viscosity for Applicants component B2 ( see paragraph [0027], page 2). Viscosity is inherent function of molecular weight and molecular weight distribution for polymers of the same chemical composition and can be also characterized by melt flow rate ( MFR). Tanaka further discloses that preferable MFR range for component A is from 1 to 50 g/10min.( see line 20, column 3), which is fully encompasses range of 0.3 to 15 g/10 min, claimed by Applicant( see paragraph [0017], page 2); for component B ( see line 35, column 2) is from 0.5 to 10 g/10 min., and for component C (see line 60, column 6) is from 0.1 to 10 g/10 min. **Therefore viscosity ranges and ratios determine by MFR or by actual viscosity measurement will be in the same ranges as claimed by Applicant in Claims 1 and 2. Burden shifts to Applicant to prove the contrary by presenting factual comparative results.** (Emphasis added).

However, to support an anticipation rejection based on inherency, the Examiner must provide factual and technical grounds establishing that the inherent feature **necessarily flows** from the teachings of the prior art. See *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (BPAI 1990). Inherency **must** flow as a **necessary conclusion** from the prior art, not simply a possible one. *In re Oelrich*, 666

F.2d 578, 581, 212 U.S.P.Q. 323, 326 (C.C.P.A. 1981). Additionally, for the Examiner to establish inherency, the extrinsic evidence "must make clear that the missing descriptive matter is **necessarily** present in the thing described in the reference. Inherency, however, **may not be established by probabilities or possibilities**. The mere fact that a certain thing **may result** from a given set of circumstances **is not sufficient**." *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999), (Emphasis added).

As outlined *supra*, Applicant's currently claimed polypropylene resin compositions comprise, in part, a copolymer component (B), wherein copolymer component (B) comprises **a blockness (CSD) value of 0.8 or less**. Therefore, Applicant respectfully believes Applicant's currently claimed polypropylene resin compositions are necessarily different than those disclosed in Tanaka, et al. As such, given Applicant's currently claimed polypropylene resins are different than those disclosed in Tanaka, et al., Applicant respectfully believes any reliance on inherency by the Examiner is clearly improper.

Notwithstanding this factual deficiency, the Examiner has not offered any **evidentiary documentation** to support the conclusions that the claimed viscosity ratios would **necessarily** be present in Tanaka, et al., as required by an inherent anticipation rejection. ". . .when an examiner relies on a scientific theory, **evidentiary support** for the existence and meaning of that theory **must** be

provided." *In re Grose*, 592 F.2d 1161, 201 USPQ 57 (CCPA 1979), (Emphasis added). "Official notice unsupported by **documentary evidence** should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known." (Emphasis added) . Additionally, "holding that general conclusions concerning what is 'basic knowledge' or 'common sense' to one of ordinary skill in the art without specific factual findings and some concrete **evidence** in the record to support these findings will not support an obviousness rejection." *Zurko*, 258 F.3d at 1386, 59 USPQ2d at 1697, (Emphasis added). See MPEP §2144.02 and §2144.03.

Accordingly, if general conclusions concerning what is basic knowledge or common sense to one of ordinary skill in the art, **without** specific factual findings and some evidentiary documentation in the record to support these findings, would not be sufficient to support an obviousness rejection, then clearly the same would hold true for an anticipation rejection. To date, the Examiner has not proffered any evidentiary documentation to support the opined conclusion that Applicant's currently claimed viscosity ratios are inherently present in Tanaka, et al., and necessarily flow from the disclosure of Tanaka, et al.

As such, Applicant respectfully believes the current rejection should be withdrawn. However, if the Examiner maintains the current rejection, Applicant respectfully requests the Examiner to **show**,



with evidentiary documentation, that Tanaka, et al. necessary discloses Applicant's currently claimed viscosity ratios.

Moreover, the Office Action states on page 3, line 21 - page 4, line 16,

1.4. Presence of 'heterologous bond' claimed by Applicant in Claim 3 is inherent property of all propylene polymers **and depend on implemented catalyst system and polymerization conditions.** Tanaka discloses presence and importance of this type of microstructure for specific applications ( see lines 45-65,column 7).

1.5. Tanaka silent regarding stereoregularity of component A claimed by Applicant in Claim 4. However, stereoregularity is inherent property of polypropylene component **and depend on type of catalytic system and polymerization process used for manufacturing of a particular propylene polymer.** Because Tanaka discloses that polypropylene resin (A) can be produced by processes with solid titanium or metallocene catalyst (see line 5-10,column 3), same as Applicant indicated in disclosure, than degree of stereoregularity will be identical for both polymers.

1.6. Tanaka also silent regarding morphology of obtained films from polypropylene composition, particularly about layers or needles , in specific sizes and aspect ratios as claimed by Applicant in Claim 5. Again, phase morphology is inherent property of the composition **and depends on compatibility of ingredients and relative quantities.** Some production technique could alternate some aspects of phase morphology, but Applicant does not discloses or claimed any specific production technique. Burden shifts to the Applicant to provide factual evidence to the contrary. (Emphasis added).

Applicant respectfully traverses the Examiner's contention Tanaka, et al. inherently discloses Applicant's currently claimed heterologous bond, stereoregularity of component A, and morphology of films. As outlined *supra*, Applicant is currently claiming a

polypropylene resin composition comprising, in part, a copolymer component (B), wherein copolymer component (B) comprises **a blockness (CSD) value of 0.8 or less**. Accordingly, Applicant respectfully believes Tanaka, et al. clearly discloses different compositions than those currently claimed by Applicant.

Notwithstanding this factual difference, as outlined *supra*, in order to anticipate the claims, the claimed subject matter must be disclosed in the reference with "sufficient specificity to constitute an anticipation under the statute." See MPEP §2131.03 II. Additionally, for the Examiner to establish inherency, the extrinsic evidence "must make clear that the missing descriptive matter is **necessarily** present in the thing described in the reference. Inherency, however, **may not be established by probabilities or possibilities**. The mere fact that a certain thing **may** result from a given set of circumstances **is not sufficient**." *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999), (Emphasis added). See MPEP §2163.07(a).

In this regard, Applicant respectfully believes the Examiner has not addressed **where** Tanaka, et al. supposedly discloses **each and every facet** of Applicant's currently claimed polypropylene resin compositions, and **where** and **how** the disclosure of Tanaka, et al. inherently discloses Applicant's currently claimed heterologous bond, the stereoregularity of component A, and the morphology of films obtained from Applicant's currently claimed polypropylene

resin compositions. However, this is the Examiner's initial burden.

In fact, as outlined above, the currently pending Office Action acknowledges,

Presence of 'heterologous bond' claimed by Applicant in Claim 3 is inherent property of all propylene polymers and **depend on implemented catalytic system and polymerization conditions.** . . . stereoregularity is inherent property of polypropylene component and **depend on type of catalytic system and polymerization process used for manufacturing of a particular propylene polymer.** . . . phase morphology is inherent property of the composition and **depends on compatibility of ingredients and relative quantities.** Some production technique could alternate some aspects of phase morphology, but Applicant does not disclose or claimed any specific production technique. (Emphasis added)

Accordingly, the Examiner freely acknowledges that Applicant's currently claimed heterologous bond, stereoregularity of component A, and morphology of films depend on an array of factors, and are thus not **necessarily** present in Tanaka, et al. As such, given the Examiner's concessions, Applicant respectfully believes any attempt at establishing a rejection based on inherency, insomuch that Tanaka, et al. **necessarily** discloses Applicant's currently claimed heterologous bond, stereoregularity of component A, and morphology of films, is clearly deficient and improper.

Therefore, Applicant respectfully believes the current rejection should be withdrawn. However, if the Examiner maintains the current rejection, Applicant respectfully requests the Examiner to **show, with evidentiary documentation,** that Tanaka, et al. **necessary,** and **not** by probabilities or possibilities, discloses

Applicant's currently claimed heterologous bond, stereoregularity of component A, and morphology of films.

In light of the above, claims 1-6 are therefore believed to be patentable over the Tanaka, et al. patent. Accordingly, reconsideration and withdrawal of the rejection is respectfully requested.

### CONCLUSION

Based upon the above remarks, the presently claimed subject matter is believed to be novel and patentably distinguishable over the prior art of record. The Examiner is therefore respectfully requested to reconsider and withdraw all rejections and allow all pending claims 1-6. Favorable action with an early allowance of the claims pending in this application is earnestly solicited.

The Examiner is welcomed to telephone the undersigned practitioner if she has any questions or comments.

Respectfully submitted,

By: 

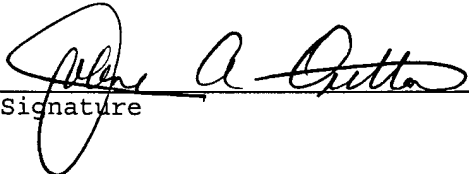
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